



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,671	08/07/2001	Kevin Miller	ORCL 2000-070-01	3662
7590 08/29/2007 WAGNER, MURABITO & HAO LLP Third Floor Two North Market Street San Jose, CA 95113			EXAMINER GREIMEL, JOCELYN	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 08/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/924,671	Applicant(s) MILLER ET AL.	
	Examiner Jocelyn Greimel	Art Unit 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 July 2007 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Alaia et al (US Patent No. 6,199,050 B1, hereinafter Alaia). In reference to claim 1, Alaia discloses: in an electronic commerce exchange; an auction method, system and apparatus for implementing automatic extension of an auction in response to bidding activity from auction participants, comprising the steps of: setting an end time for concluding an auction (col. 4, lines 12-40); receiving bids from remote bidders via a distributed computing network (col. 4, lines 12-65); measuring a number of bids

Art Unit: 3693

received within a predetermined time of the auction end time; if the measured number of bids exceeds a threshold number of bids, extending the duration of the auction automatically and setting a new auction end time (col. 4-8, 14); and notifying auction participants of the new auction end time (col. 4, line 61 – col. 5, line 46; col. 6, lines 30-67; col. 7, lines 1-31).

3. In reference to claim 2, Alaia discloses the auction method further including the step of setting a start time of the auction (col. 4, lines 12-40).

4. In reference to claims 3 and 4, Alaia discloses the auction method wherein the predetermined number of bids is user defined (col. 4, lines 23-40; col. 6, lines 63-67; col. 7, lines 1-30; col. 14, lines 23-59). Alaia discloses the auction method wherein the predetermined time is user defined (col. 4, lines 23-40; col. 6, lines 63-67; col. 7, lines 1-30; col. 9, line 25+; col. 14, lines 23-59).

5. In reference to claims 5 and 6, Alaia discloses the auction method wherein the duration of the extension from the new auction end time is user defined. Alaia additionally discloses the auction method, which further includes the step of extending the duration of the auction a plurality of times where the greater number of bids is received within the predetermined time respectively (col. 4, lines 23-40; col. 6, lines 63-67; col. 7, lines 1-30; col. 14, lines 23-59).

Art Unit: 3693

6. In reference to claims 13-18, Alaia discloses in an electronic commerce exchange; an auction method, system and apparatus for implementing automatic extension of an auction in response to bidding activity from auction participants, comprising the steps of: wherein said threshold number of bids is dynamically adjustable during said auction; wherein said threshold number of bids is dynamically adjustable during said auction; a method of automatically extending an auction, said method comprising: setting an end time for concluding an auction; receiving bids from remote bidders via a distributed computing network; measuring a rate at which incoming bids are received; if the measured rate of exceeds a predetermined threshold, automatically extending the duration of the auction and setting a new auction end time; and notifying auction participants of the new auction end time; measuring said rate at which incoming bids are received during a predetermined time before the end of said auction; wherein said threshold is dynamically adjustable during said auction; and wherein said threshold is set prior to the start of said auction (col. 4, lines 23-40; col. 6, lines 63-67; col. 7, lines 1-30; col. 9, line 25+; col. 14, lines 23-59).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia as applied to claims 1-6 above, and further in view of eBay Help Basics, Frequently Asked Questions on Bidding (hereinafter, eBay).** In reference to claim 8, Alaia discloses: in an electronic commerce exchange, an auction method for implementing dynamic automatic extension of an auction in response to bidding activity from auction participants, comprising the steps of: setting a start time and an end time for an auction; receiving bids from remote bidders via a distributed computing network; measuring a number of bids received within a predetermined time of the auction end time; if the measured number of bids exceeds the threshold number of bids, extending the duration of the auction automatically and setting a new auction end time; and notifying auction participants of the new end time (col. 4, lines 23-40; col. 6, lines 63-67; col. 7, lines 1-30; col. 9, lines 3-41; col. 14, lines 23-59; and as detailed above). However, Alaia does not disclose an auction method, system and apparatus for implementing dynamic automatic extension of an auction in response to bidding activity from auction participants including, setting a minimum bid difference at which a

succeeding bid must differ from a preceding bid from the remote bidders. Ebay discloses a method of setting a minimum bid difference at which a succeeding bid must differ from a preceding bid from the remote bidders, as is well known in auction practice, called bid increments (pages 1-4, especially 2). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the auction method of Alaia to include the bid incrementation of Ebay because it makes the auction more user-friendly and efficient.

9. In reference to claims 9 and 10, Alaia discloses: the auction method wherein the predetermined number of bids is altered dynamically after the start time of the auction. Alaia additionally discloses the auction method wherein the predetermined time is altered dynamically after the start time of the auction (col. 9, lines 3-41). In reference to claim 11, Alaia discloses the auction method wherein the duration of the extension from the new auction end time is altered dynamically after the start time of the auction (col. 9, lines 3-41). In reference to claim 12, Alaia discloses the auction method further including the step of extending the duration of the auction a plurality of times where the greater number of bids are received within the predetermined time respectively (col. 7, lines 19-31; col. 9, lines 3-41). However, Alaia does not disclose an auction method, system and apparatus for implementing dynamic automatic extension of an auction in response to bidding activity from auction participants including, setting a minimum bid difference at which a succeeding bid must differ from a preceding bid from the remote bidders. Ebay discloses a method of setting a minimum bid difference at which a

Art Unit: 3693

succeeding bid must differ from a preceding bid from the remote bidders, as is well known in auction practice, called bid increments (pages 1-4, especially 2). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the auction method of Alaia to include the bid incrementation of Ebay because it makes the auction more user-friendly and efficient.

Response to Arguments

10. Applicant's arguments filed 09 July 2007 have been fully considered but they are not persuasive. Alaia discloses in detail how the start and end time for auctions are displayed to auction participants, in addition how these times are adjusted for extensions (and the new end time is displayed) (see, Alaia col. 5). The closing time is dynamically altered. Alaia discloses in detail how "the flow" of bids in an auction can be used to extend the auction. This process is flexible and dynamic (in the set-of needed number of bids and time for bids). This is a customizable process and can be set up for different triggers (bids, percentages, etc). Additionally, Applicant's arguments with respect to claims 7-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

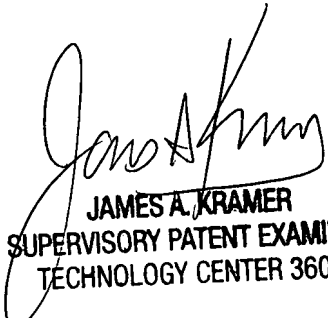
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jocelyn Greimel whose telephone number is (571) 272-3734. The examiner can normally be reached on Monday - Friday 8:30 AM - 4:30 PM

Art Unit: 3693

EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jocelyn Greimel
Examiner, Art Unit 3693
August 13, 2007

 8-17-07
JAMES A. KRAMER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600